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DaimlerChrysler
Intellectual Capital Corporation

Fax

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Date: April 11, 2006

Group Art Unit: 3627

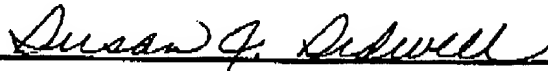
Re: Application No. 09/967,095

See the attached:

- 1) Transmittal Form
- 2) Fee Transmittal (in duplicate)
- 3) Appeal Brief

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Susan J. Sidwell



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APR 11 2006

PTO/SB/21 (08-00)

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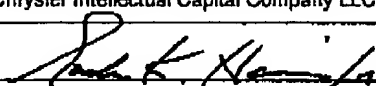
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TRANSMITTAL FORM <i>(to be used for all correspondence after initial filing)</i>	Application Number	09/967,095
	Filing Date	September 28, 2001
	First Named Inventor	Nagel et al.
	Group Art Unit	3627
	Examiner Name	Ronald Laneau
Total Number of Pages in This Submission	Attorney Docket Number	705581US1

ENCLOSURES (check all that apply)		
<input checked="" type="checkbox"/> Fee Transmittal Form <input type="checkbox"/> Fee Attached <input type="checkbox"/> Amendment / Response <input type="checkbox"/> After Final <input type="checkbox"/> Affidavits/declaration(s) <input type="checkbox"/> Extension of Time Request (two months) <input type="checkbox"/> Express Abandonment Request <input type="checkbox"/> Information Disclosure Statement <input type="checkbox"/> Certified Copy of Priority Document(s) <input type="checkbox"/> Response to Missing Parts/ Incomplete Application <input type="checkbox"/> Response to Missing Parts under 37 CFR 1.52 or 1.53	<input type="checkbox"/> Assignment Papers (for an Application) <input type="checkbox"/> Drawing(s) <input type="checkbox"/> Licensing-related Papers <input type="checkbox"/> Petition <input type="checkbox"/> Petition to Convert to a Provisional Application <input type="checkbox"/> Power of Attorney, Revocation Change of Correspondence Address <input type="checkbox"/> Terminal Disclaimer <input type="checkbox"/> Request for Refund <input type="checkbox"/> CD, Number of CD(s) _____	<input type="checkbox"/> After Allowance Communication to Group <input type="checkbox"/> Appeal Communication to Board of Appeals and Interferences <input checked="" type="checkbox"/> Appeal Communication to Group (Appeal Notice, Brief, Reply Brief) (in Triplicate) <input type="checkbox"/> Proprietary Information <input type="checkbox"/> Status Letter <input checked="" type="checkbox"/> Other Enclosure(s) (please identify below):
Remarks		

SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT			
Firm or Individual name	DaimlerChrysler Intellectual Capital Company LLC	Attorney/Agent Name Gordon K. Harris, Jr.	Reg. No. 28,615
Signature			
Date	April 11, 2006		

CERTIFICATE OF FACSIMILE TRANSMISSION			
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Signature		Date	April 11, 2006

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APR 11 2006

FEE TRANSMITTAL for FY 2005

Effective 10/01/2004. Patent fees are subject to annual revision.

☐ Applicant claims small entity status. See 37 CFR 1.27TOTAL AMOUNT OF PAYMENT (\$)
500

Complete If Known

Application Number 09/967,095

Filing Date September 28, 2001

First Named Inventor Nagel et al.

Examiner Name Ronald Laneau

Art Unit 3627

Attorney Docket No. 705501US1

METHOD OF PAYMENT (check all that apply)

☐ Check ☐ Credit card ☐ Money Order ☐ Other ☐ None☒ Deposit Account:Deposit
Account
Number

03-1800

Deposit
Account
Name

DaimlerChrysler Intellectual Capital Company LLC

The Director is authorized to: (check all that apply)

☒ Charge fee(s) indicated below ☒ Credit any overpayments
☒ Charge any additional fee(s) during the pendency of this application
☐ Charge fee(s) indicated below, except for the filing fee to the above-identified deposit account.

FEE CALCULATION

1. BASIC FILING FEE

Large Entity		Small Entity		Fee Description	Fee Paid
Fee Code	Fee (\$)	Fee Code	Fee (\$)		
1011	300	2011	150	Utility filing fee	
1012	200	2012	100	Design filing fee	
1013	200	2013	100	Plant filing fee	
1014	300	2014	150	Reissue filing fee	
1005	200	2005	100	Provisional filing fee	

SUBTOTAL (1)

(\$)
0

2. EXTRA CLAIM FEES FOR UTILITY AND REISSUE

Total Claims	Extra Claims	Fee from below	Fee Paid
20 **	0	0	0
Independent Claims	3 **	0	0
Multiple Dependent			0

Large Entity		Small Entity		Fee Description
Fee Code	Fee (\$)	Fee Code	Fee (\$)	
1202	50	2202	25	Claims in excess of 20
1201	200	2201	100	Independent claims in excess of 3
1203	350	2203	180	Multiple dependent claim, if not paid
1204	200	2204	100	Reissue independent claims over original patent
1205	50	2205	25	Reissue claims in excess of 20 and over original patent

SUBTOTAL (2)

(\$)
0

**or number previously paid, if greater. For Reissues, see above.

FEE CALCULATION (continued)

3. ADDITIONAL FEES
Large Entity Small Entity

Fee Code	Fee (\$)	Fee Code	Fee (\$)	Fee Description	Fee Paid
1051	130	2051	65	Surcharge - late filing fee or oath	
1052	50	2052	25	Surcharge - late provisional filing fee or cover sheet	
1053	130	1053	130	Non-English specification	
1812	2,520	1812	2,520	For filing a request for reexamination	
1804	920*	1804	920*	Requesting publication of SIR prior to Examiner action	
1805	1,840*	1805	1,840*	Requesting publication of SIR after Examiner action	
1251	120	2251	60	Extension for reply within first month	
1252	450	2252	225	Extension for reply within second month	
1253	1020	2253	510	Extension for reply within third month	
1254	1,590	2254	795	Extension for reply within fourth month	
1255	2,160	2255	1080	Extension for reply within fifth month	
1401	500	2401	250	Notice of Appeal	500
1402	500	2402	250	Filing a brief in support of an appeal	
1403	1000	2403	500	Request for oral hearing	
1452	500	2452	250	Petition to revive - unavoidable	
1453	1500	2453	750	Petition to revive - unintentional	
1501	1400	2501	700	Utility issue fee (or reissue)	
1502	800	2502	400	Design issue fee	
1460	130	1460	130	Petitions to the Commissioner	
1807	50	1807	50	Processing fee under 37 CFR 1.17 (q)	
1808	180	1808	180	Submission of Information Disclosure Stmt	
8021	40	8021	40	Recording each patent assignment per property (times number of properties)	
1809	790	2809	395	Filing a submission after final rejection (37 CFR § 1.129(a))	
1810	790	2810	395	For each additional invention to be examined (37 CFR § 1.129(b))	
1801	790	2801	395	Request for Continued Examination (RCE)	

Other fee (specify) _____

*Reduced by Basic Filing Fee Paid

SUBTOTAL (3)

(\$)
500

4. SEARCH/EXAMINATION FEES

1111	500	2111	250	Utility Search Fee	
1112	100	2112	50	Design Search Fee	
1113	300	2113	150	Plant Search Fee	
1114	500	2114	250	Reissue Search Fee	
1311	200	2311	100	Utility Examination Fee	
1312	130	2312	65	Design Examination Fee	
1313	160	2313	80	Plant Examination Fee	
1314	500	2314	300	Reissue Examination Fee	

SUBTOTAL (4)

(\$)
0

TOTAL FEES ENCLOSED: \$500

SUBMITTED BY

Name (Print/Type)	Registration No. (Attorney/Agent)	Telephone	Date
Gordon K. Harris Jr.	28,615	(248) 944-6526	April 11, 2006
Signature			

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APR 11 2006

Attorney Docket No. 705581US1

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Group Art Unit: 3627)
Examiner: Ronald Laneau)
Serial No. 09/967,095)
Applicants: Nagel et al.)
Filed: September 28, 2001)
For: MARKET CENTER BASED)
PURCHASING SYSTEM AND)
METHOD)
Attorney Docket No.: 705581US1)

APPEAL BRIEF

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

This is an appeal from the Final Rejection of Claims 18, 4, 6—8, 12—14, and 19 under 35 U.S.C. § 103 (a) in the Final Office Action mailed November 25, 2005.

I. REAL PARTY IN INTEREST

The real party in interest is DaimlerChrysler Corporation, a corporation organized and existing under the laws of the State of Delaware U.S.A., and having a principal place of business in Auburn Hills, Michigan, U.S.A.

II. RELATED APPEALS AND INTERFERENCES

There are no related appeals or interferences which would directly affect or be directly affected by or have a bearing on the Board's decision in the instant appeal.

II. STATUS OF THE CLAIMS

Claims 1—3, 5, 9—11 and 15—17 have been withdrawn from consideration and were previously canceled.

Claims 18, 4, 6—8, 12—14, and 19 are pending in this application. All pending claims have been rejected and are the subject of this Appeal. A copy of Claims 18, 4, 6—8, 12—14 and 19 is set forth in the Appendix hereto.

IV. STATUS OF AMENDMENTS

In response to the Final Office Action of November 25, 2005, Applicants filed a Response After Final Rejection on January 19, 2006, with no further amendment to the pending claims. A Notice of Appeal was filed February 23, 2006.

V. SUMMARY OF THE CLAIMED SUBJECT MATTER

In a first aspect of Applicants' invention set forth in independent Claim 18, a method of procuring goods and services through a computer based market center system (112 of Fig. 1 or 220 of Fig. 2) has a website accessible by a plurality of entities (110 of Fig. 1 or 214 of Fig. 2) via the Internet (116 of Fig. 1) and includes arranging with a plurality of suppliers (114 of Fig. 1 or 222 of Fig. 2), each having an Internet website, to participate in offering goods and services to the entities via the website of the market center system. (Paragraph 23, lines 1—6). The method further includes negotiating, with at least a subset of the suppliers, prices for their respective goods and services at which said entities can purchase the respective goods and services. (Paragraph 17, lines 3—10). The method further allows said entities (110 of Fig. 1 or 214 of Fig. 2) to place orders with any of the at least subset of suppliers (114 of Fig. 1 or 222 of Fig. 2) for respective goods and services via purchaser websites and the market center website. The

method further allows said entities an option of obtaining via purchaser websites in the market center website a price quotation from any of the at least subset of suppliers. (Paragraph 23, lines 10—14. Also, see Figs. 3a, 3b in conjunction with the specification at Paragraphs 24—28). Information is collected on said purchases made by said entities via said computer based market center system and on quotes received directly from said suppliers by said entities (step 338, Fig. 3b in conjunction with Paragraph 28, lines 5—8 and Fig. 5, step 526 in conjunction with Paragraph 33, lines 7—10) and analyzing said information at said computer based market center system. (Paragraph 21, lines 1—3. Also, see Fig. 4 in conjunction with the specification at Paragraph 29, lines 6—7). The method then determines if any of said quotes were for goods or services having a previously negotiated price and if so, whether said quotes for that good or service were at prices more favorable than said previously negotiated prices. (Fig. 4, step 416 in conjunction with Paragraph 29, lines 7—10. Also, see Fig. 5, step 528 in conjunction with Paragraph 33, lines 10—18).

In another aspect of the invention as set forth in Applicants' independent claim 19, a purchasing system for procuring goods and services bought by a plurality of entities having a common predetermined relationship includes a computer based market center having a market center website accessible by the entities via the Internet. (112 of Fig. 1 or 220 of Fig. 2). A plurality of supplier internet websites (114 of Fig. 1 or 222 of Fig. 2) each accessible by the entities via the market center website additionally forms part of the system. A database (transaction database 113 of Fig. 1) stores information concerning supplier prices and transactions entered into between the entities and suppliers associated with the supplier websites via the Internet. The market center computer is operative to analyze said transactions (see Paragraph 21, lines 1—3. Also, see Fig. 4 in conjunction with Paragraph 29, lines 1—7) to determine if any involve purchases at prices more advantageous than the supplier prices for said goods or services stored in said database. (Fig. 4, step 416 in conjunction with Paragraph 29, lines 7—10. Also, see Fig.

A careful review of Yang, especially paragraph 22, claim 5, Fig. 2 and paragraphs 32—39 shows no teaching of analyzing the collected information to determine if any of the quotes are at prices more favorable than a previously negotiated price (claim 18) or a computer based market center being operative to analyze transactions to determine if any involve purchases at prices more advantageous than supplier prices for the goods or services stored in the system's database (claim 19).

Yang is concerned with real time negotiation of a price and is silent as to analyzing transactions relative to previously negotiated prices. Yang's analysis system concerns reports covering which types of products are well sold, which types of products have larger gross profit and the whole enterprise profit (see page 5, paragraph 0079). Yang discloses nothing suggesting determining whether previous quotes are now being undercut by current transactions.

In responding to Applicants' argument for the proposition that the Yang reference does not disclose analyzing transactions to determine whether a specific entity has negotiated a price better than that previously negotiated at the market center, the Examiner asserts that:

Yang not only discloses a report management system that comprises choosing the type of report wherein the type of report comprises for instance the enterprise balance report, the enterprise asset report, the enterprise working gross profit report, and the enterprise net profit report but also discloses that other types of reports can be generated (the foregoing list of reports is not restricting) which would certainly include a report analyzing transactions relative to previously negotiated prices or a report for determining if any of the quotes are at prices more favorable than a previously negotiated price or if any involve purchases at prices more advantageous than supplier prices for the goods or services stored in the system's database (page 5, [0079], lines 11—21).

This position essentially presumes inherency of Applicants' claimed limitation in Yang. (The inherent teaching of a prior art reference ... arises both in the context of anticipation and obviousness. In re Napier, 55 F.3d 610, 34 USPQ2d 1782 (Fed. Cir. 1995)). It is respectfully submitted that this allegation of the Examiner is mere speculation improperly using hindsight resort to Applicants' teachings. Inherency may not be established by probabilities or possibilities. The

5, step 528, in conjunction with Paragraph 33, lines 10—18).

VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

Presented for review is the rejection of Claims 18, 4, 6—8, 12—14 and 19 under 35 U.S.C. § 103(a) as being unpatentable over Barnes et al. (U.S. Patent No. 5,970,475) in view of Yang (U.S. Publication No. 2002/012550 A1).

VII. ARGUMENT

Rejection Under 35 U.S.C. § 103

Claims 4, 6—8, 12—14, 18 and 19 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Barnes et al (U.S. 5,970,475) in view of Yang (U.S. 2002/0120550 A1). The rejection is respectfully traversed.

A careful review of Barnes et al. reveals no disclosure or suggestion of collecting information on the purchases made by participating entities via the computer based marketing center system and on quotes received from suppliers and analyzing the collected information to determine if any of the quotes were at prices more favorable than a previously negotiated price (amended Claim 18), nor a disclosure or suggestion of a computer based market center being operative to analyze transactions to determine if any involve purchases at prices more advantageous than supplier prices for the goods or services stored in the system's database (amended Claim 19). The Examiner has conceded this point in rejecting all the claims over the combination of Barnes et al. with Yang, citing Yang for the alleged teaching of analyzing collected information, determining quotes and determining whether the quotes for a good or services were at prices more favorable than previously negotiated prices.

It is respectfully submitted that the combined teachings of Barnes et al. and Yang fail to show all the limitations of independent claims 18 and 19.

mere fact that a certain thing may result from a given set of circumstances does not establish inherency. In re Robertson, 169 F.3d 743, 49 USPQ2d 1949 (Fed. Cir. 1999). The fact that a certain result or characteristic may occur or be present in the prior art is not sufficient to establish the inherency of that result or characteristic. In re Rijckaert, 9 F.3d 1531, 28 USPQ2d 1955 (Fed. Cir. 1993).

Yang is not concerned with analyzing buyer negotiated prices with a prior market center negotiated advertised price to determine whether the market center should re-negotiate terms with a given supplier. There is simply no suggestion in Yang of this type analysis. Hence, the following limitation of independent claim 18 is not taught by the combination of cited references:

determining if any of said quotes were for goods or services having a previously negotiated price and if so, whether said quotes for that good or service were at prices more favorable than said previously negotiated prices.

Similarly, the following limitation of independent claim 19 is not taught by the cited combination of references:

said computer based market center is operative to analyze said transactions to determine if any involve purchases at prices more advantageous than the supplier prices for said goods or services stored in said database.

VIII. SUMMARY

The cited references, taken separately or in combination, fail to disclose or suggest every limitation in Applicants' pending claims. Therefore, the Examiner has failed to establish a *prima facie* case of unpatentability, and the rejection of Claims 18, 4, 6—8, 12—14 and 19 under 35 U.S.C. § 103(a) should be reversed.

Respectfully submitted,

Mark Nagel et al.

Dated: April 11, 2006

BY: 

Gordon K. Harris, Jr., Reg. No. 28,615
Attorneys for Applicants

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Phone: (248) 944-6519

CLAIMS APPENDIX

Listing of Claims

18. A method of procuring goods and services through a computer based market center system having a website accessible by a plurality of entities via the Internet, the method comprising:

arranging with a plurality of suppliers, each having an Internet website, to participate in offering goods and services to the entities via the website of the market center system;

negotiating with at least a subset of said suppliers prices for their respective goods and services at which said entities can purchase the respective goods and services;

allowing said entities to place orders with any of the at least a subset of suppliers for respective goods and services via purchaser websites and the market center website; and allowing said entities an option of obtaining via purchaser websites and the market center website a price quotation from any of the at least a subset of suppliers;

collecting information on said purchases made by said entities via said computer based market center system and on quotes received directly from said suppliers by said entities and analyzing said information at said computer based market center system; and

determining if any of said quotes were for goods or services having a previously negotiated price and if so, whether said quotes for that good or service were at prices more favorable than said previously negotiated prices.

4. The method of claim 18, further including renegotiating said negotiated price for one of said goods and services when results of analyzing said information indicate that a more favorable price than the negotiated price for that good or service is being offered.

6. The method of claim 18 wherein said plurality of entities having a common predetermined relationship comprise an original equipment manufacturer and its dealerships.

7. The method of claim 18 wherein said plurality of entities having a common predetermined relationship comprise a franchise.

8. The method of claim 18 wherein said plurality of entities having a common predetermined relationship comprise individuals that are members of a club.

12. The method of claim 18 wherein information concerning purchases made by and quotes obtained by said entities via said computer based market center system are stored in a database.

13. The method of claim 18 further including a host organization paying said suppliers for purchases made from said suppliers via said computer based market

center system by said entities and said host organization billing said entities for said purchases.

14. The method of claim 13, further including the step of said host organization operating said computer based market center system.

19. A purchasing system for procuring goods and services by a plurality of entities having a common predetermined relationship, the purchasing system comprising:

a computer based market center having a market center website accessible by the entities via the Internet;

a plurality of supplier Internet websites, each accessible by the entities via the market center website; and

a database storing information concerning supplier prices and transactions entered into between the entities and suppliers associated with the supplier websites via the Internet, wherein said computer based market center is operative to analyze said transactions to determine if any involve purchases at prices more advantageous than the supplier prices for said goods or services stored in said database.

EVIDENCE APPENDIX

NONE

RELATED PROCEEDINGS APPENDIX

NONE

09/993,221

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